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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,745	03/23/2004	Bernard Lionel Gien	BOTHA P-4	2549
7590	07/26/2006			EXAMINER COLLINS, GIOVANNA M
LACKENBACH SIEGEL, LLP One Chase Road Scarsdale, NY 10583			ART UNIT 3672	PAPER NUMBER

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/806,745	GIEN, BERNARD LIONEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Giovanna M. Collins	3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 May 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 3/23/04 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Oelke 3,164,214.

Oelke discloses (fig. 1a) a down the hole drill assembly having a reciprocating piston (15), an upper chamber (16) for pressurized air to cause downward travel of the piston and a lower chamber (18) for pressurized air to cause the piston to lift and a drill bit (20) with an inner end (22), body (at 20) and face (at bottom near element 70) wherein the inner end of the bit is closed and exhaust passages (see col. 2, line 58-col. 3, line 6) are provided from the upper and lower chamber pass the inner end of the bit through body of the bit to exit through the bit face.

Referring to claim 2, Oelke discloses the exhaust passages exit via a vent (70) extending through the bit body from the bit face.

Referring to claim 3, Oelke discloses the bit has openings (68) extending transversely through the body of the bit to a blind bore (at 20) extending from the bit face.

Referring to claim 5, Oelke discloses a drill bit (20).

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3. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Currington 3,692,122.

Currington discloses(fig. 1c) a drill bit (D).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oelke '214 in view of Ennis 4,921,056.

Oelke does not disclose a flushing air orifice. Ennis teaches a flushing air orifice to allow additional flushing air to help cool the bit face and blow away chippings. As it would be advantageous to cool the bit face and blow away chippings, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the assembly disclosed by Oelke to have a flushing air orifice in view of the teachings of Ennis.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

Referring to claim 5, Applicant's arguments filed 3/6/06 have been fully considered but they are not persuasive. The applicant states claim 5 is a dependent claim. However, claim 5 is an independent that states claiming a drill bit and an intended use of the drill bit. Therefore claim 5 is anticipated by the Currington reference.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Giovanna M. Collins whose telephone number is 571-272-7027. The examiner can normally be reached on 6:30-3 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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gmc

  
**David Bagnell**  
Supervisory Patent Examiner  
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